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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA

Plaintiff,

v.

JOY M. FERGUSON,

Defendant.

Civil No.

**COMPLAINT FOR ERRONEOUS REFUND**

The United States of America makes the following allegations against the defendant,  
Joy M. Ferguson, as follows:

1. This is a civil action in which the United States seeks to recover, with interest, the erroneous refunds of the federal income, social security and Medicare taxes totaling \$4,753.55 that were issued to the defendant, Joy M. Ferguson, as a result of the misrepresentations and fraudulent statements that Ferguson made on her 2001 and 2002 Form 1040 tax returns.

**Jurisdiction and Venue**

2. This civil action has been authorized by the Chief Counsel of the Internal

1 Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction  
2 of the Attorney General of the United States.

3 3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and I.R.C.  
4 (26 U.S.C.) §§ 7401 and 7405.

5 4. Defendant Joy M. Ferguson resides in Henderson, Nevada, within the jurisdiction  
6 of this Court.

7 5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.

8 6. On or about January 19, 2005, and January 18, 2005, Ferguson signed and filed  
9 IRS Form 1040 federal income tax returns for the 2001 and 2002 tax years. An IRS Form  
10 4852 Substitute for Form W-2 Wage and Tax Statement, or Form 1099-R, Distributions from  
11 Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, Etc., which  
12 Ferguson signed under penalty of perjury, was attached to Ferguson's 2001 and 2002 Form  
13 1040 tax returns.

14 7. Implementing the false and fraudulent tax scheme promoted by Peter Eric  
15 Hendrickson, Ferguson's self-prepared 2001 and 2002 tax returns falsely stated that Ferguson  
16 had no (1) wages, tips or salaries; (2) adjusted gross income; or (3) taxable income during  
17 2001 and 2002.

18 8. The Hendrickson scheme is based on the false and frivolous argument that the  
19 terms "wages" and "income" for purposes of the federal income tax and for federal tax  
20 withholding are limited to government employees. Hendrickson's theories about the supposed  
21 narrow application of federal income-tax laws (including his arguments that wages are not  
22 income, and that only federal workers are required to pay income taxes) have been uniformly  
23 and repeatedly rejected by the federal courts. As one court recently said, the claim that wages  
24 are not income "has been rejected as many times as it has been asserted." *Abdo v. United*  
25 *States*, 234 F. Supp.2d 553, 563 (M.D. N.C. 2002), *affirmed*, 63 Fed. Appx. 163 (4th Cir. 2003).  
26 Other courts long ago rejected Hendrickson's claim that wages and income for federal income  
27 tax and withholding purposes mean only wages and income of government employees. See  
28 *e.g., United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985) (the argument "that under 26

U.S.C. § 3401(c) the category of ‘employee’ does not include privately employed wage earners is a preposterous reading of the statute. It is obvious that within the context of both statutes the word ‘includes’ is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others.”); *McKinley v. United States*, 1992 WL 330407 (S.D. Ohio, September. 3, 1992) (“The plaintiffs assert that only federal officers, federal employees, elected officials or corporate officers are ‘employees’ who are considered to be taxpayers under the Internal Revenue Code. The plaintiffs argue, in essence, that the explicit inclusion of federal officers and employees within the definition of ‘employee’ for the purposes of the I.R.C. operates to exclude all others from the definition. . . . However, the plaintiffs’ interpretation of the law comes from a misunderstanding of the law, and has been rejected by the federal courts. . . . In fact, the term ‘employee’ as used in the I.R.C. does include private wage earners.”) *E.g., Latham*, 754 F.2d at 750.

9. Contrary to her representations on her false Forms 4852, Ferguson in fact did receive IRS Form W-2 Wage and Tax Statements for 2001 and 2002 from her employer, Carter & Burgess, Inc., that correctly reported her wages and the federal income, social security and Medicare taxes that were withheld from those wages as follows:

<u>Tax Year</u>	<u>Wages</u>	<u>Income Tax</u>	<u>Social Security Tax</u>	<u>Medicare Tax</u>
2001	\$21,610	\$868	\$1,339	\$313
2002	\$22,595	\$473	\$1,400	\$327

But Ferguson did not attach the W-2 forms to her tax returns or otherwise submit them to the IRS. Instead, Ferguson attached IRS Forms 4852 (“Substitute for Form W-2, Wage and Tax Statement, etc.”) to her 2001 and 2002 tax returns, signed the Forms 4852 under penalty of perjury, and falsely and fraudulently stated on the Forms 4852 that Carter & Burgess had paid her no (a) wages; (b) social security wages; or (3) Medicare wages during 2001 and 2002.

10. Pre-printed language on block 9 of the Forms 4852 that Ferguson filed with her 2001 and 2002 Form 1040 tax returns asks “Explain your efforts to obtain Form W-2, 1099-R, or W-2c, Statements of Corrected Income and Tax Amounts.” In response to this request on the Forms 4852, Ferguson falsely and fraudulently stated each time:

1 Request, but company refuses to issue forms correctly listing payments of  
2 "wages" as defined in 3401(a) and 3121(a). The amounts listed as withheld on  
the W-2 it submitted are correct, however.

3 The quoted language is taken directly from Peter Eric Hendrickson's tax-fraud promotional  
4 materials. The quoted language is false because the 2001 and 2002 W-2 Wage and Tax  
5 Statements that Carter & Burgess issued to Ferguson correctly reported her wages of \$21,610  
6 and \$22,595 for the 2001 and 2002 tax years, respectively. On information and belief, the  
7 quoted language is also false in stating that (a) Ferguson had requested Carter & Burgess to  
8 issue her W-2 Wage and Tax Statements or corrected W-2s for 2001 and 2002; and (b) that  
9 Carter & Burgess had refused to do so.

10 11. On or about March 25, 2005, and March 18, 2005, based on Ferguson's false  
11 and fraudulent representations as described above, the IRS issued income-tax refunds of  
12 \$2,538.86 and \$2,214.69 for the 2001 and 2002 tax years, respectively, to Ferguson. These  
13 are the total amounts of the withheld federal income, social security and Medicare taxes listed  
14 on the Forms 4852 that Ferguson filed with her 2001 and 2002 tax returns.

15 12. Ferguson obtained the tax refunds of \$2,538.86 and \$2,214.69 by fraud and by  
16 misrepresentation of material facts, as described above.

17 13. Because Ferguson misrepresented, on her 2001 and 2002 Form 1040 tax  
18 returns, that she received no wages or salaries during 2001 and 2002, and claimed credit for  
19 the federal income, social security and Medicare taxes that were withheld from her wages or  
20 salary for 2001 and 2002, the IRS should not have issued the refunds, and therefore the  
21 issuance of the \$2,538.86 and \$2,214.69 tax refunds for the 2001 and 2002 tax years was, in  
22 each instance, an error.

23 14. As a result of the erroneous refund for the 2001 tax year, the United States is  
24 entitled to judgment against Ferguson in the amount of \$2,538.86, plus interest from March 25,  
25 2005, to the date of payment as provided by law.

26 15. As a result of the erroneous refund for the 2002 tax year, the United States is  
27 entitled to judgment against Ferguson in the amount of \$2,214.69, plus interest from March 18,  
28 2005, to the date of payment as provided by law.

1 WHEREFORE, the United States prays as follows:

2 A. That this Court determine that the United States erroneously issued 2001 and 2002 tax  
3 refunds to Joy M. Ferguson in the amounts of \$2,538.86 and \$2,214.69, respectively;

4 B. That judgment be entered on behalf of the United States and against Joy M. Ferguson in  
5 the amount of \$2,538.86, plus interest thereon as allowed by I.R.C. § § 6602 from March 25,  
6 2005;

7 C. That judgment be entered on behalf of the United States and against Joy M. Ferguson in  
8 the amount of \$2,214.69, plus interest thereon as allowed by I.R.C. § § 6602 from March 18,  
9 2005;

10 D. That the United States of America be awarded its reasonable attorneys' fees and costs  
11 incurred in this action; and

12 E. That the Court grant the United States such other and further relief as the Court may deem  
13 to be just and proper.

14 Respectfully submitted this 10<sup>th</sup> day of April, 2006.

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16 United States Attorney

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